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No. 262

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

MRS. MARTHA BAILEY CRICHTON,
Petitioner

vs.

MRS. GLORIA CRICHTON McGEHEE
and POWELL CRICHTON, JR.,
Respondents

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Availing ourselves of the right accorded by Rule 24 of this Court, we make brief reply to Respondents' opposing brief as recently filed in this Court.

Essentially, the brief which has been filed by Respondents in opposition to the petition for a writ of certiorari is a brief on the merits of this litigation.

The entire thrust of Respondents' argument, as incorporated in their brief, is to defend the action

of the Louisiana Court in according full faith and credit to the judgment of the New York Court. We are perfectly willing to meet that issue and will meet it in brief and argument when the matter comes up on its merits in this Court.

But that is not the issue here.

If, under Article 2400 of the Louisiana Revised Civil Code,[1] the property here in litigation is "subject to the same provisions of law which regulate the community of acquets and gains between citizens of this State" (as was held to be the case by a majority of the Louisiana Court of Appeal); and if, under the law of Louisiana, "title to one-half of the community property from the very moment of its acquisition is . . . . . vested in the wife";[2] and if (as was also held by the Court of Appeal) the according of full faith and credit to the judgment of the New York Court results in the vesting in the succession of the deceased husband of title to the wife's share of the community property; then we submit it requires no citation of authority to demonstrate that by the application of the Full Faith and Credit clause in this instance this petitioner has been divested of valuable property rights accorded her by the Louisiana law, and has been denied the equal protection of the law.

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1 **Quoted at p. 6 of Petition.**

2 **Succession of Helis (1954) 226 La. 133, 75 So. (2d) 221, cited at p. 16 of Petition.**

Such a result runs counter to another provision of the United States Constitution, namely the Due Process and Equal Protection clauses of the Fourteenth Amendment, and squarely presents the questions discussed in our original petition.

Respondents in their brief (pp. 28-31) question the procedural basis for the constitutional issues presented to this Court.

We have pointed out in our original petition (pp. 10-12) the unequivocal language in which these issues were presented to the Louisiana appellate courts. The fact that those courts may not have discussed those specific issues does not alter the fact of their having been raised.

As noted in our original petition, the questions here presented were specifically raised in petitioner's brief to the Court of Appeal, in her application to that Court for a rehearing, in her brief in support of that application, and in her application (and supporting brief) to the Supreme Court seeking review by that Court.

The Louisiana Code of Civil Procedure defines an appeal as "the exercise of the right of a party to have a judgment of a trial court revised, modified, set aside, or reversed by an appellate court".[3] The

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[3] **Art. 2082, C. C. P.**

same Code provides that "an assignment of errors is not necessary in any appeal",[4] and that "the appellate court shall render any judgment which is just, legal, and proper on appeal".[5]

We know of no provision of law which requires a more substantial procedural basis for presenting these questions to this Court than the basis already laid by petitioner in the Louisiana courts.

We feel that there is nothing further in respondents' brief which merits a reply at this time and again urge that the petition for writ of certiorari should be granted.

Respectfully submitted,

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4 **Art. 2129, C. C. P.**
5 **Art. 2164, C. C. P.**